

PT 98-48

Tax Type: **PROPERTY TAX**

Issue: **Charitable Ownership/Use**

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

ZION TEMPLE)	
MISSIONARY BAPTIST)	No. 95-16-0930
CHURCH,)	
APPLICANT)	
)	Real Estate Tax Exemption for
)	1995 Assessment Year
v.)	
)	P.I.N: 20-21-313-020
)	
)	Cook County Parcel
ILLINOIS DEPARTMENT)	
OF REVENUE)	Alan I. Marcus,
)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This proceeding raises a very limited issue, that being whether real estate identified by Cook County Parcel Index Number 20-21-313-020 (hereinafter the "subject property" or the "subject parcel") qualifies for exemption under 35 ILCS 200/15-40,¹ wherein "[a]ll property used exclusively for religious purposes" is exempted from real estate taxation.

1. In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks exemption from 1995 real estate taxes. Therefore, the applicable provisions are those found in the Property Tax Code, 35 ILCS 200/1 *et seq.*

The controversy arises as follows:

On January 25, 1996, the Zion Temple Missionary Baptist Church (hereinafter the "applicant") filed a Real Estate Exemption Complaint with the Cook County Board of Review (hereinafter the "Board") (Dept. Group. Ex. No. 1, Doc. A). The Board reviewed the complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that the requested exemption be granted with respect to that portion of the 1995 assessment year which began on February 17, 1995 and ended on December 31, 1995. (Dept. Group Ex. No. 1, Doc. B).

The Department rejected this recommendation by issuing a determination dated January 24, 1997. Said determination found that the subject property was not in exempt use throughout the 1995 assessment year. Applicant filed a timely request for hearing on February 14, 1997 (Dept. Ex. No. 3) and later presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, it is recommended that the subject property not be exempt from 1995 real estate taxes.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein, namely that the subject parcel was not in exempt use throughout the 1995 assessment year, are established by the admission into evidence of Dept. Group Ex. No. 1 and Dept Ex. No. 2.
2. Applicant was originally incorporated under the General Not For Profit Corporation Act of Illinois on July 17, 1943. Its corporate purposes are to: (1) conduct religious worship as an independent Baptist Church according to the

- teachings of the Holy Bible; (2) acquire and hold real estate, improved or otherwise; and (3) do all things, in accordance with the laws of the State of Illinois, and the United States, to further the worship of G-D and obey the teachings of the Holy Bible according to the Baptist creed. Applicant Ex. No. 2.
3. The subject property is located at 745 W. 69th Street, Chicago IL 60621. Applicant acquired its ownership interest therein via a warranty deed dated February 17, 1995. Dept. Group Ex. No. 1, Docs. A, B; Applicant Ex. No. 1-A.
 4. The subject property was improved with a vacant garage, formerly used by the Chicago Transit Authority, when applicant obtained its right of possession. Applicant intended to demolish the garage, and use the subject parcel as a parking lot to support church activities, at that time. Applicant Ex. No. 1-C, Applicant Ex. No. 7.
 5. Applicant did not actually use the subject property, as a parking lot or for any other purpose, during 1995. It did, however, pay the first of two installments on a contract to demolish the garage on December 12, 1995. Tr. pp. 19, 23, 29.
 6. The City of Chicago issued a permit to demolish the garage on December 28, 1995. Applicant Ex. No. 6-B.
 7. Applicant paid the second installment on the demolition contract on February 9, 1996. Applicant Ex. No. 6-A.
 8. The contractor did not actually begin demolishing the garage until May 19, 1996. It completed this work several days later. Tr. p. 20.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting a portion of the subject property from 1995 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that said property was not in exempt use throughout the tax year in question, as required by 35 **ILCS** 200/15-40, should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-3 *et seq.* The provisions of that statute that govern disposition of the

instant proceeding are found in Section 200/15-40, wherein "[a]ll property *used* exclusively for religious purposes" is exempted from real estate taxation. (Emphasis added).

Prior to 1909, it was a requirement for the exemption of property used for religious purposes that it be owned by the organization that claimed the exemption. Since that time however, a statutory amendment (which the emphasized language demonstrates is still in effect) eliminated that requirement in cases that do not involve parsonages. The test of exemption then became (and, with the exemption of parsonages, still remains) use and not ownership. People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922). *See also*, American Nat'l Bank and Trust Co. v. Dep't of Revenue, 242 Ill. App.3d 716 (2nd Dist. 1993). For this reason, the subject property cannot be exempted under Section 200/15-40 merely because the applicant owns it. Therefore, it is necessary to examine the definition of "religious use" in order to determine whether said property qualifies for exemption under the applicable statute.

In People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132 (1911) (hereinafter "McCullough"), the Illinois Supreme Court considered whether appellee's real estate qualified for religious and educational exemptions from property taxes under amendments to the Revenue Act that became effective July 1, 1909. While the court's analysis of the educational exemption has no relevance to this proceeding, its definition of the term "religious purpose" provides the basic framework for analyzing taxpayer's claim under Section 200/15-40.

The court began its analysis by noting that "[w]hile religion, in its broadest sense, includes all forms and phases of belief in the existence of superior beings capable of exercising power over the human race, yet in the common understanding and in its application to the people of this State it means the formal recognition of G-D as members of societies and associations." McCullough, *supra* at 136.

Cases decided after McCullough have acknowledged that religious beliefs are not necessarily limited to those which profess an orthodox belief in G-D. *See*, United States v.

Seeger, 380 U.S. 163 (1965). However, the following definition of "religious purpose" contained in McCullough, emphasizes a more traditional approach:

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction. McCullough at 136-137. (Emphasis added).

These criteria provide a basic framework for analyzing the present record. They must, however, be supplemented by the following well-settled rules of statutory construction and interpretation that apply in all exemption cases: (1) a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968), Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987); (2) the party seeking exemption bears the burden of proof. Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App.3d 153 (1st Dist. 1985); (3) such party must clearly and convincingly prove that the property in question falls within the appropriate statutory exemption. *Id*; (4) the word "exclusively" when used in Section 200/15-40 and other exemption statutes means the "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993) and (5) applicant's actual use, as opposed to its intended use, determines whether the property in question is used for an exempt purpose. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994).

The present record establishes that the subject property was vacant, and therefore, not actually used for any religious purpose throughout the 1995 assessment year. In a case having very similar facts, Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983), the court held that a vacant parcel, which was owned by appellant's church yet improved with a boarded-up building, did not qualify for exemption under the then-existing version of Section 200/15-40.

This holding, coupled with the fact that applicant did not actually begin using the subject property as a parking area² until *after* the garage was demolished in May of 1996, establish that the said parcel was not "exclusively used for religious purposes" during the 1995 assessment year. Therefore, the Department's determination that denied the subject parcel exemption from 1995 real estate taxes under 35 **ILCS** 200/15-40 should be affirmed.

2. If the subject parcel had actually been used as a parking facility throughout 1995, it might be appropriate to exempt said parcel under 35 **ILCS** 200/15-125, which provides that:

Parking areas, not leased or used for profit, when used as part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, or religious or charitable institutions which meets the qualifications for exemption, are exempt [from real estate taxation].

This provision does not apply herein because the subject property was vacant during the tax year in question. Consequently, the *actual use* requirement mandates that vacant property, such the one at issue herein, can not be exempted under Section 200/15-125, even though the applicant/owner *intended* that it be used as a parking area for church-related activities. *See, supra* at p. 6.

WHEREFORE, for all the above-stated reasons, it is my recommendation that Cook County Parcel Index Number 20-21-313-020 not be exempt from 1995 real estate taxes.

August 10, 1998

Date

Alan I. Marcus
Administrative Law Judge